ized to sell the properties (comprised in the residuary estate) by public auction with reserve prices to be fixed by the registrar.

Whether illegitimate children have a right to share

Clause 13 of the will provides that the residuary estate is to be divided among the 'lawful natural and/or adopted sons' of the testator's sons. The question to be decided was whether the word 'lawful' was used to qualify the words 'natural and/or adopted sons' or whether the word was used as an alternative to the word 'natural'. In the context, I was of the view that the word 'lawful' qualified the words 'natural and/or adopted sons' and that the word 'natural' had been used by the testator in contradistinction to the word 'adopted'. Accordingly, I ruled that it was the testator's intention that only legitimate children were to share in the residuary estate.

Whether any member of the class entitled to the residuary estate who dies before the closing of the class (18 September 1974) has a vested right as a member of the class

Mr Ramayah submitted that any member of the class who dies before the closing of the class has a vested right in the estate and that his estate would be within the class to whom distribution must be made. In support of this proposition he quoted *Williams: The Law of Wills* at p 553 where under the heading 'Effect of death before testator or distribution' it is said:

> As regards members of a class taking under a postponed gift, the death of one of them who has survived the testator before the period of distribution does not defeat his interest provided that the contingency of surviving that period is not part of the description of the class.

The will did not provide for such a contingency. Mr Wee Han Kim, counsel for the ninth defendant, submitted that the residuary estate should be distributed only to the specified grandchildren living on 18 September 1974 and he invited the court to imply such a term. I was not prepared to do so. As there was nothing in the will to suggest otherwise, I held that the class of beneficiaries of the residuary estate included the estates of beneficiaries who died before 18 September 1974.

Order accordingly.

Solicitors: *Wee Ramayah & Partners; Chu Chan Gan & Ooi; Chong Yeo & Partners; Ling & Co; Wee Eng Lock & Son; Chiam & Co.*

Reported by *Liu Hern Kuan*

MALAYSIAN REPORTS

Lee Weng Kin v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-76 OF 1990

HASHIM YEOP A SANI CJ (MALAYA), MOHAMED AZMI SCJ AND WAN YAHYA J

Preventive Detention — Validity of order — Restricted residence — Order unsigned by minister — Restricted Residence Enactment 1933, ss 2(ii) & 3(i)

Words and Phrases — 'Copy' — Restricted Residence Enactment 1933, s 3(1)

In this case, the appellant had been arrested and detained under the Restricted Residence Enactment 1933 and subsequently he was served with a copy of an order purportedly issued by the minister by which he was restricted to Kuala Krai, Kelantan for a period of five years. The copy of the order was unsigned and merely bore the rubber stamped words 'TT Dato Megat Junid bin Megat Ayob' in the space intended for his signature. An application to the High Court to declare the order invalid was dismissed and the appellant appealed.

Held, allowing the appeal:

(1) The word 'copy' in s 3(i) of the Restricted Residence Enactment 1933 means a certified copy as provided under s 63(a) of the Evidence Act 1950, or copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy as provided in s 63(b).

(2) An unsigned order, as exhibited in this case, which was partly printed and partly typewritten and not authenticated or certified to be a true copy of the order signed by the minister is not a copy of the minister's order as required under s 3(i) and is not valid.

[Bahasa Malaysia summary

Di dalam kes ini perayu telah ditangkap dan ditahan di bawah Enakmen Kediaman Terhad 1933 dan kemudiannya salinan perintah yang dikatakan dibuat oleh menteri telah disampaikan kepadanya. Perintah itu menghadkan kediamannya untuk masa lima tahun di Kuala Krai, Kelantan. Salinan perintah itu tidak ditandatangani, akan tetapi dicap dengan perkataan 'TT Dato Megat Junid bin Megat Ayob'. Permohonan ke Mahkamah Tinggi untuk membatalkan perintah itu telah ditolak dan rayuan dibuat kepada Mahkamah Agung.

Diputuskan, membenarkan rayuan itu:

(1) Perkataan 'copy' di dalam s 3(i) Enakmen Kediaman Terhad 1933 bererti salinan yang sah seperti diperuntukkan dalam s 63(a) Akta Keterangan 1950, atau salinan-salinan yang dibuat dari yang asal oleh proses-proses mekanikal yang sendirinya menentukan ketepatan salinan ('copy') itu seperti diperuntukkan dalam s 63(b).

(2) Perintah yang tidak ditandatangani, seperti dalam kes ini, yang sebahagiannya dicetak dan sebahagiannya ditaip dan tidak disahkan atau diakui bahawa salinan itu ialah salinan yang benar dari perintah yang ditandatangani oleh menteri bukan salinan yang diperlukan oleh s 3(i), dan oleh itu, tidak sah.]

Cases referred to

1 *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 (refd)

2 *M/s Hindustan Construction Co Ltd* v *The Union of India* AIR 1967 SC 526 (refd)
3 *Re Datuk James Wong Kim Min* [1976] 2 MLJ 245 (refd)
4 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (refd)
5 *Tan Hoon Seng* v *Minister for Home Affairs, Malaysia & Anor* [1990] 1 MLJ 171 (refd)
6 *Poh Chin Kay* v *Menteri Hal Ehwal Dalam Negeri, Malaysia* [1990] 2 MLJ 297 (refd)

Legislation referred to
Restricted Residence Enactment 1933 ss 2(ii), 3(i)

Appeal from: Originating Summons No R8-24-34-1990 (High Court, Kuala Lumpur)

Karpal Singh for the appellant.
Suriyadi Halim Omar (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Wan Yahya J (delivering the judgment of the court): At the inception of the hearing of this appeal, we were informed by Mr Karpal Singh, counsel for the appellant, and Encik Suriyadi Halim Omar, senior federal counsel, appearing on behalf of the respondents, that although the singular ground appearing in the memorandum of appeal was neither raised in argument nor reflected in the learned judge's grounds of judgment, it would nevertheless affect the same question of law identical in issue with an earlier decision made by the same judge in Kuala Lumpur High Court OS No R8 24-29-90 — *Sam Choy* v *Timbalan Menteri Dalam Negeri, Malaysia & Ors* (on appeal yet to be heard before this court).

Both counsel agree that the decisive question to be placed before this court is whether a copy of an unsigned order issued by the Menteri Hal Ehwal Dalam Negeri, Malaysia pursuant to ss 2(ii) and 2A of the Restricted Residence Enactment 1933 ('the Enactment') and served on the appellant in compliance with s 3(i) of the Enactment is valid. We allowed this appeal to proceed on that ground because, putting aside the other ground of appeal in the earlier case, the fundamental issue with regard to the validity of the documents served on the appellant in *Sam Choy*'s case must in any event affect the outcome of this case.

The facts of the case are not in dispute. The appellant was arrested on 19 August 1989 pursuant to an order dated 19 July 1989 made under s 2(1) of the Enactment by the Minister of Home Affairs, Malaysia ('the minister'). He was detained at Pudu Prison until 20 September 1989 on which date he was served with a copy of an order dated the same day issued by the minister pursuant to s 2 of the Enactment. By that order, he was restricted to Kuala Krai, Kelantan for a period of five years commencing from the date of the order. That copy, however, was unsigned by the minister and merely bore rubber stamped words 'TT Dato Megat Junid bin Megat Ayob' in the space intended for his signature.

The service of this order made under s 2(ii) on the appellant is no doubt done in compliance with s 3(i) of the Enactment which reads:

> When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the officer-in-charge of the prison in which he is detained and the officer-in-charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside.

In this appeal we are primarily concerned with the interpretation of the word 'copy' as it appears in the above section and its consequential effect on the validity of the order and the requirement of s 3(i) of the Enactment.

There does not appear to be any explicit Malaysian case law on this subject but some degree of inferential authority on the need to establish the authenticity of a restriction order may be drawn from a passage of the judgment of Ong Hock Thye CJ in *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri*[1] at p 141:

> ... in my opinion, production by the respondent minister of an order of detention by him, *ex facie regular* and *duly authenticated*, constitutes a peremptory defence to any complaint of unlawful detention and places on the complainant the burden of establishing that the order is unwarranted, defective or otherwise invalid. (Emphasis supplied.)

Words of similar expression can also be found in Suffian FJ's (as he then was) judgment in the same case at p 152 wherein he said:

> In my judgment, the onus of providing the legality of the detention is on the minister in the first instance. This he can discharge simply by producing the order of detention which, if its *authenticity* and *good faith* are not impugned, is a sufficient answer. If the detainee alleges mala fides, as he does here, then the onus shifts to him and it is for him to prove mala fides. (Emphasis supplied.)

Both these citations are, of course, said in relation to a detainee's challenge on the legality of a minister's order under the Internal Security Act 1960 but in other respects the principle governing the service of the order and identity of the minister is the same as under the Enactment. It stands to reason that, if the authenticity of the order of the minister itself is challengable, then an unsigned copy of such an order can more so be open to question.

An Indian Supreme Court's decision in *M/s Hindustan Construction Co Ltd* v *The Union of India*,[2] however, is nearer in point with our present issue on the interpretation of the word 'copy'. At p 527 of the judgment, the word was discussed in the following terms:

> Now the word 'copy' as such is not defined in the Indian Evidence Act, I of 1872. But we get an idea of what a copy is from the provision of SD 63 of the Evidence Act. That section, inter alia, defines what secondary evidence means and includes, namely — (i) certified copies as provided in s 76 of the Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore, a copy means a document prepared from the original which is an accurate or true copy of the original. In *Webster's New World Dictionary*, the word 'copy' means 'a thing made just like another, full reproduction or transcription'.

In my judgment, the word 'copy' appearing in s 3(i) of the Enactment means a certified copy as provided under s 63(a) of the Evidence Act 1950, or copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy as provided in s 63(b). An unsigned order as in exh 'LWK2' which was partly printed and partly typewritten and not authenticated or certified to be a true copy of the order signed by the minister is, in our view, not a copy of the minister's order as envisaged in s 3(i) of the Enactment.

In accordance with our established principles as repeatedly demonstrated in our past judgments, the court will apply a strict interpretation on laws which restrict or curtail the liberty of the subjects. This principle was expressed in *Re Datuk James Wong Kim Min*,[3] by Lee Hun Hoe CJ (Borneo) in the following terms:

> In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorizing detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. There the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith.

Since then Hashim Yeop A Sani SCJ (as he then was) had expressed in *PP* v *Koh Yoke Koon*[4] the same principle adopted by the courts in the following words:

> Detention not in accordance with law is inconsistent with the fundamental right guaranteed under art 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such law must be construed strictly and, in the case of doubt, the court should lean in favour of the subject. See also *Andrew s/o Thamboosamy* v *Superintendent of Pudu Prison, Kuala Lumpur.*

Thereafter, as Chief Justice (Malaya), he once again propounded in *Tan Hoon Seng* v *Minister for Home Affairs, Malaysia & Anor*[5] that:

> The law of preventive detention must be construed strictly and in the case of doubt the court should lean in favour of the subject.

In a more recent judgment in *Poh Chin Kay* v *Menteri Hal Ehwal Dalam Negeri, Malaysia*,[6] the learned CJ reiterated the judicial view on preventive detention:

> We are fully conscious of the government's effort to combat the drug menace in this country. But there is a fundamental principle involved here. The power to detain a person without trial cannot be exercised by inference. The power must be expressed, clear and unequivocal. Where detention law and the liberty of the individuals are concerned, this is the most correct approach for the courts to apply. There is hardly any need to repeat what has been said on the principle to be followed by the courts in dealing with detention law. The principles were emphasized in *Re Tan Boon Liat @ Allen & Anor* at p 114 reiterated by this court in *PP* v *Koh Yoke Koon* and *Tan Hoon Seng* v *Minister of Home Affairs*. The appeals are allowed.

The law on preventive detention under the Internal Security Act 1960, as in the Restricted Residence Enactment 1933, involves the deprivation or serious curtailment of a citizen's personal liberty and as such it must be subjected to strict judicial interpretation. A citizen whose personal liberty is about to be deprived or seriously restricted has the right to be notified, in the most authentic manner, the order which has been made against him.

As we have found, the unsigned copy of the order as in exh 'LKW2' is not a copy required within the meaning of s 3(i) to be served on the appellant, that section has not been complied with and consequently the order made by the minister is invalid.

We therefore allow this appeal with costs here and in the court below and order the deposit to be returned to the appellant.

The appellant's restriction to the town of Kuala Krai, Kelantan on the authority of the restriction order dated 20 September 1989 purportedly made under the hand of the minister is hereby declared null and void.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*